

### **Remarks**

Claims 35-70 are pending in this Application. In an Office Action mailed on the date of March 14, 2008, the Examiner required a restriction of claims under 35 U.S.C. §§ 121 and 372. The claims were said to be directed to the following groups of inventions:

- Group I: Claims 35-45, 51-55 and 60-70, drawn to a method of making Ca silicate hydrate using suspension agent;
- Group II: Claims 46-50, drawn to a Ca silicate hydrate product; and
- Group III: Claims 56-59, drawn to a reactable “matrix.”

Applicants with this paper provisionally elect with traverse Group I claims, Claims 35-45, 51-55 and 60-70 directed to a method of making Ca silicate hydrate using suspension agent, for further prosecution. The remaining claims have been withdrawn for possible rejoinder at a later time. Traversal is on the grounds that the Examiner has provided no classification of the claims or evidence that there are no corresponding technical features. Applicants submit that the claims include a corresponding technical feature. Group III claims include a technical feature of contacting and reacting a calcareous material with siliceous material, a suspension therefrom, and producing calcium silicate hydrate. Claim 50, as amended, provides for a calcium silicate hydrate produced by the method of Claim 35.

Applicants respectfully request entry and allowance of the amended claims, amended as to matters of form and/or to provide features considered part of the claimed invention. New Claims 71-73 are also introduced to further protect Applicants' invention. The new claims find support in the as-filed specification and claims. No new matter has been introduced with said claims.

Applicants also respectfully submit that for examination purposes the restriction requirement is not proper. Applicants respectfully point out that in accordance with MPEP 803, “If the search and examination of all the claims in an application can be made without serious burden, the examiner must examine them on the merits, even though they include claims to independent or distinct inventions.” The Examiner has not explicitly stated the burden and only

provides a potential list of reasons that may apply without any supporting facts (see page 3 of the Office Action. Applicants submit that there must be a submission of factual evidence on the record provided by the Examiner. To this end and in view of the remarks above, Applicants respectfully submit that a restriction is not required for examination purposes.

With regard to the position on page 2 of the Office Action that Claim 46 is anticipated by US Patent Nos. 4,427,611; 4,490,320; 4,388,257; 4,193,958; 4,477,397; 3,352,746; 3,501,324, International Publication No. WO 01/14274, International Publication No. WO 98/45222, EP 78119, GB 99702, Derwent Abstract No. 89-161597/22, JP 11079729 or U.S. Patent No. 4,709,743, Applicants submit that the rejection is improperly expressed. The MPEP states that when the Examiner does not produce a *prima facie* case, the Applicant is under no obligation to submit evidence to the contrary. Applicants respectfully request the Examiner submit a proper rejection by stating the specific reasons for rejection, including all the grounds for holding the rejection, stated fully and clearly and pointing to citations that support the grounds for rejection so that Applicant may form a proper reply. Applicants also respectfully request the Examiner provide the complete reference number for "Shannon et al. '380," if used, because it is not included in the List of References Cited that accompanied the Office Action mailed on March 14, 2008.

With regard to the position on page 2 of the Office Action and the statement made by the Examiner, "even if not anticipated, overlapping ranges of amounts would have been *prima facie* obvious to one of ordinary skill," Applicants respectfully submit that the reason stated is not sufficient to establish a *prima facie* case of obviousness. The MPEP and Federal Circuit have made clear that an obviousness rejection "cannot be sustained with mere conclusory statements." Instead, it is required that the Examiner provide evidence that, as a whole, shows that the legal determination is more probable than not. The Examiner has provided no evidence of statements made on page 3 of the Office Action. Applicants respectfully request such evidence or an articulate reasoning with rationale and proper evidence be provided in order to be able to submit a proper reply.

### **Conclusion**

Applicants respectfully submits that the Application is in condition for allowance and earnestly seeks allowance of the claims provided in the Listing of Claims beginning on page 2 of this paper.

Should the Examiner have questions, comments, or suggestions in furtherance of prosecution of this Application, please contact Applicants' representative at 214.999.4330. Applicants, through their representative, stand ready to conduct a telephone interview with the Examiner to review the Application or this Amendment if the Examiner believes that such an interview would assist in advancement of this Application.

A Petition for Extension of Time and the appropriate fees are submitted with this response. No additional fees are believed to be due with this submission.

To the extent that fees are required with this response, the Commissioner is hereby authorized to charge payment of said fees to Deposit Account No. 07-0153 of Gardere Wynne Sewell LLP and reference Attorney Docket No. 131279-1039.

In the event that any additional time is needed for this filing, or any additional time in excess of that requested in a petition for an extension of time, please consider this a petition for an extension of time for any needed extension of time pursuant to 37 C.F.R. § 1.136 or any other section or provision of Title 37. Applicant respectfully requests that the Commissioner grant any such petition and authorize the Commissioner to charge the Deposit Account referenced above. Please credit any overpayments to this same Deposit Account.

This is intended to be a complete response to the Office Action mailed March 14, 2008. This Amendment has been submitted electronically.

**Please direct all correspondence to the practitioner listed below at Customer No.  
60148.**

Respectfully submitted,

GARDERE WYNNE SEWELL LLP

A handwritten signature in black ink, reading "Monique A. Vander Molen". The signature is fluid and cursive, with the first name "Monique" being the most prominent part.

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Dated: September 15, 2008